IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5655 of 2002
with
Civil Application No.3027 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRABHATSINH MADHABHAI DABHI

Appearance:
MR HARDIK C RAWAL for the Petitioner.
MR GK RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/07/2003

ORAL JUDGEMENT

1. Rule returnable today. Mr.Rathod, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for final hearing today.

2. The Labour Court has misapplied the provisions of Section 11-A of the Industrial Disputes Act, by passing a reinstatement order in favour of the workman, which has resulted in filing of this petition at the hands of the S.T. Corporation.

3. The respondent-workman was serving as a Conductor in the S.T. Corporation. He was on duty on 22.2.1994, on an S.T. bus, which was plying on 28-29 route. At the time of checking of the said bus, it was found that, even though the respondent collected Rs.60/- towards fare, he had not issued tickets to the passengers. After recording the statements of some passengers and after considering the documentary evidence on record, he was charge-sheeted by the S.T. Corporation.

He was subjected to three charges, viz.,

(i) not issuing tickets in spite of recovering advance fare of Rs.60/- from the passengers,

(ii) that he has closed the numbers of Way Bill from 075 to 200; and

(iii) that he has not deposited the way bill in the depot and has destroyed the same.

On the basis of the same, he was subjected to a department enquiry and on conclusion of the enquiry, he was dismissed from service. The respondent thereafter challenged the said dismissal, by raising an Industrial Dispute, being Reference (LCA) No.677 of 1997. While partly allowing the said Reference, the Labour Court came to the conclusion, that at the time of checking by the Checking Staff, the Conductor was already undertaking the process of issuing tickets and, accordingly, the charge that he had not issued tickets, after getting fare, cannot be said to have been proved beyond reasonable doubt. The Labour Court also believed that even though he was required to issue tickets after recovering the fare, he had not done the same and he has tried to destroy the evidence. This part is reflected at page 6 in the Award of the Labour Court (page 16 of the compilation). However, the Labour Court has come to the conclusion that the punishment of removal was on a higher side. The Labour Court has also found that, even in past, on 24 occasions, the workman was found to have committed misconduct. After observing the same, the

learned Judge has further observed that, ultimately, if the concerned workman is reinstated in service, with a punishment of withholding of three increments with future effect, that would serve the ends of justice. Accordingly, the Labour Court reinstated the concerned workman by inflicting punishment of withholding of three increments with future effect. It is this order which is under challenge at the instance of the S.T. Corporation.

4. Considering the reasoning of the Labour Court, in my view, the Labour Court has, without any basis, interfered with the punishment order by resorting to the provisions of Section 11-A of the Industrial Disputes Act. The Labour Court itself has found that the serious misconduct against the respondent-workman is proved. That finding, as stated earlier, is already given at page 16 of the compilation, while dealing with point No.1. The Labour Court itself has found that there are 24 misconducts committed by the concerned workman during his service career. The powers under Section 11-A of the I.D. Act cannot be exercised in such a casual manner. It seems that the Labour Court is of the opinion that once there is an order of removal or dismissal, powers under Section 11-A of the Act are required to be exercised straight away. As a matter of fact, before exercising the powers, the Court has to apply its mind whether the facts of the case warrant invoking such powers. In the instant case, even though serious charges are proved against the respondent, still, the Court has applied the provisions of Section 11-A of the Act, which could not have been applied at all considering the nature of the misconduct proved against the respondent. The reasoning of the Labour Court is absolutely unsatisfactory for exercising such powers. The Labour Court is required to apply its mind in greater detail before applying the said provision where serious misconduct is proved against an employee.

5. The learned Advocate for the respondent, on the other hand, submitted that two passengers have given statement that the respondent was in the process of issuing tickets. However, it is required to be noted that the Labour Court itself has found that the workman has destroyed the record. In my view, by destroying the record, in can be presumed that the same was done with a particular motive. It is also not in dispute that after collecting the fare of Rs.60/- in advance, the respondent workman had not issued tickets to the passengers and the Labour Court has taken a very charitable view, by holding that the Conductor was in the process of issuing tickets. The finding of the Labour Court is absolutely

half-hearted. The Labour Court has also observed that the Corporation has failed to prove the charge beyond reasonable doubt. In a departmental enquiry, punishment can be awarded even if some evidence is available on record or even on preponderance of probabilities. It is not necessary in a departmental enquiry that the charge must be proved beyond reasonable doubt. The Labour Court has also recorded a positive finding that the concerned workman has indulged himself in a serious misconduct. In my view, considering the aforesaid aspect of the matter, the Labour Court has committed a grave error of law in applying the provisions of Section 11-A of the Act and the same is exercised in an absolutely mechanical manner. Often this court has held that when serious misconduct is proved, powers under Section 11-A of the Act should hardly be available in favour of such erring workman. It is not the proposition of law that when a person is dismissed or removed from service, exercise of powers under Section 11-A is mandatory and he must be given a lesser punishment. After all, it depends upon the facts and circumstances of each case.

Mr.Raval has relied upon the decision of the Apex Court in Karnataka State Road Transport Corporation v. B.S. Hullikatti, (2001) 2 SCC 574. In paragraph 5, 6 and 7, the Apex court has observed as under :-

> " ... ...
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> 5. On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent has been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit

to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside...

xxx xxx xxx
... ..."

Mr.Raval has also relied upon the decision of the Apex Court in Janatha Bazar v. Secretary, Sahakari Noukarara Sangha & ors., (2000) 7 SCC 517. It has been held by the apex court as under in paragraphs 6, 7 and 8 :-

" ... ...

6. As stated above, the learned single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law

on this point is well settled. (RE : Municipal Committee, Bahadurgarh v. Krishnan Behari.) In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of RS.2.35,which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp.161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the powers under Section 11-A of the ID Act to grant relief with minor penalty.

7. In view of the aforeaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent,

there was lapse on the part of the management.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

... ..."

6. It is a matter of regret that even though the Supreme Court has settled the law in this aspect, the Labour Court has not considered the matter from its proper perspective and proper manner. Considering the aforesaid aspect of the matter, in my view, the benefit under Section 11-A of the I.D. Act is not available to the respondent workman in any manner. Powers under Section 11-A of the Act, as stated earlier, cannot be resorted to in each and every case. The said power is required to be exercised in a proper case while considering the facts of each case. There is no blanket proposition that moment a Reference is made against removal or dismissal, the Court must exercise powers under Section 11-A of the Act by reducing the penalty of removal or dismissal. The powers under Section 11-A of the Act cannot be exercised in such a routine and casual fashion.

7. Considering the aforesaid aspect of the matter, in my view, the order of the Labour Court is required to be quashed and set aside and it is accordingly quashed and set aside. The petition is accordingly allowed. Rule is made absolute by setting aside the order of the Labour Court, with no order as to costs.

8. At this stage, learned Advocate for the respondent, submitted that even if a person is dismissed from service, he is entitled to retiral dues as per the Rules of the Corporation. If that be so, the Corporation may consider this aspect and in spite of the order of dismissal, if the respondent is entitled to any such benefit, then, the same may be given to the respondent-workman as per the Rules of the S.T. Corporation.

In view of the disposal of the main Special Civil Application, no order need be passed in Civil Application No.3027 of 2003.

31st July, 2003 (P.B. Majmudar, J.)

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(apj)